

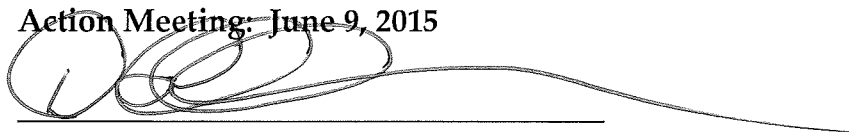
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# Docket No. SP15-406

## Kawailoa Solar, LLC

### *Staff Report*

Action Meeting: June 9, 2015

A handwritten signature in black ink, appearing to read 'Daniel Orodener', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

Daniel Orodener, Executive Officer

Submitted: June 4, 2015

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## 1. EXPLANATION OF THE PROCEEDING BEFORE THE LAND USE COMMISSION

The proceeding before the Land Use Commission ("LUC") is to consider a special permit petition ("Petition") filed by Kawaihoa Solar, LLC ("Applicant"),<sup>1</sup> to construct a 50-megawatt ("MW") solar energy facility and accessory uses and structures (collectively "SEF" or "Project") on approximately 384.1 acres of land within the State Land Use Agricultural District, identified as Tax Map Keys ("TMKs"): 6-1-005: portion of 1 and 6-1-006: portion of 1 (both parcels are approximately 1,452 and 2,050 acres, respectively, in their entirety), at Kawaihoa, North Shore, Oahu, Hawaii ("Petition Area").<sup>2</sup> Special permits are sought to permit certain "unusual and reasonable uses" within the State Land Use Agricultural and Rural Districts other than those for which the district is classified. In this instance, the SEF is not expressly permitted within the State Land Use Agricultural District, and therefore a special permit is required for its construction and operation.<sup>3</sup>

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<sup>1</sup> The Applicant is wholly owned by Kawaihoa Solar Holdings, LLC, which was wholly owned by First Wind Solar Portfolio, LLC ("First Wind Solar"). In turn, First Wind Solar was owned by First Wind Holdings, LLC, which was acquired by SunEdison, LLC, as were its subsidiaries.

<sup>2</sup> The Petition Area is owned by the Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools.

<sup>3</sup> Pursuant to §205-4.5(a)(20), Hawaii Revised Statutes ("HRS"), SEFs are permitted within the State Land Use Agricultural District provided that they do not occupy more than 10 percent of the acreage of the parcel, or 20 acres of land, whichever is lesser or for which a special permit is granted pursuant to §205-6, HRS; provided that this use shall not be permitted on lands with soil classified by the Land Study Bureau's ("LSB") detailed land classification as overall (master) productivity rating class A unless the facilities are:

- Located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land upon which the paved or unpaved road is located has a valid county agriculture tax dedication status or a valid agricultural conservation easement;
- Placed in a manner that still allows vehicular traffic to use the road; and
- **Granted a special permit by the LUC pursuant to §205-6, HRS.**

In addition, §205-4.5(a)(21), HRS, permits SEFs on soils classified by the LSB as class B or C lands **for which a special permit is granted**, provided that:

- The area occupied by the SEFs is also made available for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties;

The special permit process is governed by §205-6, HRS, and §15-15-95 et seq., Hawaii Administrative Rules ("HAR"). A special permit petition is initially filed with the respective county planning department for consideration by the appropriate planning commission. Pursuant to §205-6(d), HRS, special permits for land the area of which is greater than 15 acres or for lands designated as Important Agricultural Lands ("IAL") shall be subject to approval by the LUC. In this case, both provisions are met: the Petition Area involves approximately 384.1 acres of land (382.2 acres based on the DPP's interpretation of permissible uses within the Agricultural District) and the LUC recently designated the acreage as IAL as part of the overall lands under Docket No. DR14-52/ Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools.<sup>4</sup> Had the City and County of Honolulu Planning Commission ("Planning Commission") denied the Petition, the matter would not have come before the LUC for consideration.

In the event the planning commission acts favorably upon the special permit petition, the complete record is transmitted to the LUC for final disposition if the matter falls under the provisions of §205-6(d), HRS. Upon receipt of the complete record, the LUC has 45 days by which to approve, approve with modification, or deny the petition pursuant to §§205-6(e), HRS, and 15-15-96(a),

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- Proof of financial security to decommission the SEF is provided to the satisfaction of the appropriate county planning commission prior to the date of the commencement of commercial generation; and
  - SEFs shall be decommissioned at the owner's expense and according to certain requirements.

The Petition Area includes soils classified by the LSB as class A, B, C, and E lands. The majority of the area is comprised by class B lands, with significantly smaller acreages comprised by, in decreasing order, class C, E, and A lands. The City and County of Honolulu Department of Planning and Permitting ("DPP") determined that the subsurface improvements consisting of approximately 550 linear feet of underground electrical line planned for a 1.9-acre area beneath Ashley Road and comprised by class A and B lands did not constitute a use requiring a special permit, and therefore was permitted. Accordingly, the DPP treated the Petition Area as approximately 382.2 acres (384.1-1.9).

The SEF will also require a conditional use permit, minor, and grading and building permits.

<sup>4</sup> The Petition Area constituted a part of the Kawailoa portion of the docket (the other, smaller portion consisted of lands at Punalu'u). Most of the agricultural activities are concentrated on lands below 600 feet in elevation. Diversified agriculture, such as seed corn, banana, taro, papaya, mango, and hydroponic lettuce, represents the primary agricultural use of the area. Acreage is also devoted to livestock as well as to a koa windbreak.

HAR. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval. Under §15-15-96(a), HAR, the LUC may also remand the matter to the county planning commission for further proceedings. Approvals for special permits under §205-6, HRS, require five affirmative votes.

In its deliberations, the LUC must rely solely on the complete evidentiary record of the county planning commission's proceedings on the special permit petition. This record typically includes, among other things, the petition itself; comments from government agencies; public testimony, if any; exhibits; the Planning Department recommendation; and the transcripts of the proceedings. Given the nature of the special permit process, the parties are not permitted to introduce new evidence before the LUC that was not considered by the planning commission, and the LUC should refrain from inadvertently or deliberately requesting that additional evidence be provided. In the event the LUC does find that the record is inadequate to make an informed decision, the LUC, as noted above, may remand the matter to the planning commission for further proceedings.

The LUC is guided by five criteria in its consideration as to whether a proposed use represents an "unusual and reasonable use":

1. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Commission;
2. The desired use would not adversely affect surrounding property;
3. The use would not unreasonable burden public agencies to provide streets, sewers, water, drainage, schools, fire, and police resources;
4. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

Staff notes that although §205-50, HRS, provides standards and criteria for the reclassification or rezoning of IAL, there are no specific provisions for special permits involving IAL other than the above five guidelines. Staff believes that despite the IAL designation of the Petition Area, the standards and criteria contained in §205-50, HRS, are not applicable in this case and should not be considered in the LUC's decision on the Petition. Nevertheless, for the LUC's information, staff has provided the standards and criteria that the LUC (or the

county) is required to consider for the reclassification (or rezoning) of IAL pursuant to §205-50, HRS:

1. The relative importance of the land for agriculture based on the stock of similarly suited lands in the area and the State as a whole;
2. The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;
3. The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as important agricultural lands that create residual parcels of a size that would preclude viable agricultural use;
4. The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes; and
5. The impact of the proposed district boundary amendment or zone change on the necessity and capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area.

In addition, any decision on the district boundary amendment or zone change is required to be based on a determination that:

1. On balance, the public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes; and
2. The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands.

## **2. PROCEDURAL MATTERS**

On November 7, 2014, Kawaihoa Solar, LLC, the Applicant herein, filed the Petition to construct the SEF on the Petition Area with the DPP (File No. 2014/SUP-6).

On April 1, 2015, the Planning Commission considered the Petition. There was no public testimony provided at the hearing. The Planning Commission subsequently continued the matter to its next scheduled meeting.<sup>5</sup>

After due deliberation at its continued hearing on April 15, 2015, the Planning Commission recommended approval of the Petition to the LUC, subject to ten conditions.

On May 8, 2015, the LUC received a copy of the decision and a portion of the record of the Planning Commission's proceedings on the Petition. On June 3, 2015, the LUC received the remaining portion of the record consisting of the adopted transcripts of the Planning Commission's proceedings.

Pursuant to §205-6(e), HRS, the 45<sup>th</sup> day by which the LUC is required to render a decision on the Petition expires on July 20, 2015.

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<sup>5</sup> At the hearing, the Planning Commission requested that the Applicant provide a Preliminary Agricultural Plan given the LUC's recent designation of the Petition Area as IAL.

### 3. SUMMARY OF THE PETITION

The Applicant seeks a special permit to construct the SEF on the Petition Area. The purpose of the SEF is to produce clean, low-cost renewable energy for the island of O`ahu. According to the Applicant, large solar photovoltaic ("PV") systems are capable of generating electricity for a cost that is substantially less than Hawaiian Electric Company's ("HECO") "avoided cost" to produce the same electricity using fossil fuel without the greenhouse gas emissions from burning that fuel. Based on the projected output of the SEF over a 27-year period, the SEF is expected to produce the energy to power the equivalent of 15,000 households and save consumers approximately \$200 million compared to HECO's current avoided cost. Further, the Applicant believes that the SEF will prevent the burning of millions of barrels of oil and millions of tons of CO<sub>2</sub> from entering the atmosphere.

The Petition Area has been divided into nine sites. However, with the DPP's determination that an underground electrical line planned for a 1.9-acre area beneath Ashley Road (Site 9) is a permissible use within the State Land Use Agricultural District, and therefore not subject to a special permit, the remaining approximately 382.2 acres of land are comprised by eight sites. Sites 1 through 7 would primarily contain horizontal single-axis tracking, ground-mounted panels. Site 1 would also include an electrical substation. Site 8 would contain the second of the two proposed substations. The panels are proposed to face approximately due south, and are expected to extend approximately 4' 6" to 9' 6" off the ground on average. Each panel would generate power at 1,000 volts. In addition to the panels, the facility would include electrical equipment, such as combiner boxes, collector lines, inverters, weather monitoring stations, and switch gear, as needed, to increase the electrical voltage and aggregate the generated electricity for transmittal via the collector system.

The collector system would consist of a network of direct buried underground collection circuits connecting to two electrical substations. Mauka and Makai substations are proposed to provide for the termination of the collector lines, transform the electricity to 46,000 volts, and connect to the existing HECO Mauka and Makai switchyards, both of which were constructed as part of the nearby wind farm project. HECO's Mauka switchyard provides for interconnection with the HECO's Waialua-Kuilima 46 kilovolt ("kV") sub-transmission line, while HECO's Makai switchyard provides for interconnection with HECO's existing Waialua-Kahuku 46 kV sub-transmission line. The SEF will need to interconnect with both sub-transmission lines.



The design of the two substations would consist of an open switchrack with free-standing steel structures, occupying an area of approximately 150 feet by 180 feet. An 8-foot high chain-link perimeter fence is expected to enclose the substations. It is envisioned that new electrical equipment would be installed within each of the existing HECO switchyards to support interconnection of the planned solar facilities. An existing fiber optic cable would provide telecommunications.

Ashley Road, a private access, is expected to serve as the main entry point to the SEF as it currently does to the existing wind farm. A series of new interior service gravel roads would need to be constructed within the Petition Area to facilitate construction and allow access for ongoing operations and maintenance. The Applicant plans to construct perimeter fencing around the various sites.

In addition to the SEF, the Applicant represents that it will establish or will be actively seeking to establish a compatible agricultural operation on the Petition Area within one year of the commencement of the commercial operation of the SEF in compliance with Act 55, Session Laws of Hawaii ("SLH") 2014, which requires that the area occupied by solar energy facilities be made available for compatible agricultural activities. The Applicant proposes to make available the lands for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties as required by §205-4.5(a)(21)(A), HRS, for the duration of the commercial energy generation operations. According to the Applicant, it plans to lease the lands for the pasturage of sheep, and has already executed a Letter of Intent to Kualoa Ranch Hawaii, Inc. ("Kualoa Ranch"), to initiate this process.<sup>6</sup> Under the terms of the lease, the tenant would have use of the fencing and roadways as well as other infrastructure at the Petition Area.

The Applicant is confident that the SEF and a large sheep pasture can be co-located on the same land to the mutual benefit of both operations. According to the Applicant, there is local demand for fresh, grass-fed lamb in restaurants, stores, and farmers' markets. There is also a need on Oahu for affordable pasture acreage to graze sheep and support the startup of a viable sheep ranch.

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<sup>6</sup> In its Preliminary Agricultural Plan, the Applicant provided alternatives in the event Kualoa Ranch does not lease the Petition Area. The contingencies identified by the Applicant include leasing the site to another sheep rancher, grazing lowline cattle, raising free-range poultry, and beekeeping.

Construction of the SEF is expected to commence in January 2016 and be completed within ten months. The Applicant intends to sell the energy generated by the SEF to HECO.

Once constructed, the SEF will be a primarily passive operation for both solar power generation and ranching. Power generation is generally expected to occur between 9:00 a.m. and 4:00 p.m. based on solar intensity. Normal operation of the SEF will not require onsite personnel, and therefore the SEF will not be manned on a daily basis.

The SEF is projected to have an operational life of approximately 25 to 30 years. The SEF may be re-powered with new equipment or decommissioned. Decommissioning would involve the removal of all above ground structures, including the panels, transformers, and switchyards, and all below ground structures and foundations to a depth of 36 inches below grade. The Applicant plans to return the Petition Area to its pre-SEF condition. Most of the materials are planned to be either salvaged or recycled. It is envisioned that most of the material would be shipped to a recycling facility on the mainland, while the remaining materials would be disposed of by a contractor at authorized sites. Decommissioning is planned to take place within 12 months of the conclusion of operation or the useful life of the SEF. Based on industry estimates of removal costs and salvage value of recycled materials, the projected cost to decommission the SEF is approximately \$4 million.

The Applicant will put financial security in place to cover the estimated cost of decommission. Decommissioning security will be provided in the form of a parent guaranty, letter of credit, or some other acceptable form of security prior to commercial operation of the SEF. When a project of this nature is financed, typically either a financial reserve is established in which decommissioning funds are accumulated over several years of proceeds from energy sales, or security is posted via a letter of credit from a commercial lender.

#### **4. LAND USE DESIGNATIONS**

The Petition Area is designated within the State Land Use Agricultural District.

The Petition Area is designated as Agriculture by the North Shore Sustainable Communities Plan.

The Petition Area is zoned AG-1 Restricted Agricultural District.

The Petition Area is located outside of the City and County of Honolulu Special Management Area.

## 5. SUMMARY OF AGENCY COMMENTS ON THE PETITION<sup>7</sup>

### State Agencies

#### *State Department of Agriculture ("DOA")*

The DOA noted that it supported existing farming operations and those seeking to start new farming enterprises as well as solar energy operations in combination with compatible local food production on "B" and "C" rated agricultural land as provided for in Act 55, SLH 2014. As such, the DOA recommended that a condition requiring the Applicant and its successors and/or assigns establish a sheep ranching operation or other agricultural enterprise on the Petition Area in compliance with Act 55, SLH 2014, for the duration of the operation of the SEF. The DOA added that it was imperative for the Applicant to assist in establishing the necessary infrastructure for the sheep ranching operation to succeed.

**The Applicant reaffirmed its commitment to establish a compatible agricultural operation consistent with the statutory requirements regarding lease rates within one year of commencing commercial operation of the SEF and to have such operation on the Petition Area for the duration of the SEF.**

**The Applicant also reaffirmed its commitment to work with the tenant to facilitate the infrastructure needed for a successful agricultural operation, including watering systems, electrified fencing, and loading facilities.**

#### *State Office of Planning ("OP")*

OP supported the intent of the SEF. However, OP noted that concerns will remain in regard to the statewide challenge of seeking a balance between maintaining the availability of high quality agricultural lands and promoting renewable energy sources, such as solar facilities, on lands within the Agricultural District. OP also expressed concerns that while the co-existence of the SEF and agricultural activities may be technically feasible, the agricultural component of the Project may not be implemented as represented and may, in

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<sup>7</sup> Only substantive agency comments on the Petition are summarized. No City and County of Honolulu agencies provided substantive comments on the Petition. Comments were also received from private entities/individuals, including the Blue Planet Foundation, Tin Roof Hawaii, Susan Gim, Bryan Chee, and the Hawaii Renewable Energy Alliance, all of whom expressed support for the SEF.

fact, result in negligible amounts of sheep or other grazing animals onsite. OP pointed out that the SEF would preclude productive agricultural land from being used for agricultural purposes and contributing to the State's goal of assuring the long-term availability of agricultural lands for agricultural use if the proposed sheep operations do not occur.

OP further echoed support for the DOA's previous comments on the Petition for Declaratory Order to Designate Important Agricultural Lands in Docket No. 14-52/Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools in which the DOA supported the IAL designation of the Petition Area and related lands if the Petitioner committed to using a substantial portion of the energy generated by the SEF directly for agricultural purposes, and/or using a substantial portion of the income derived from the selling of electricity to the utility for agricultural activities within the site.

Finally, OP recommended that the requirements of §205-4.5(a)(21)(A), (B), and (C), HRS, relating to lease rates for compatible agricultural activities, proof of financial security for decommissioning, and decommissioning requirements, respectively, be included as conditions of approval.

**The Applicant represented that it is committed to the complementary uses of utility scale solar energy generation and local food production on agricultural land. The Applicant further represented that it intends to facilitate a successful sheep ranching operation on the Petition Area for the agricultural benefits and for vegetation management around the solar panels. In order to accomplish this, the Applicant noted that a significant number of sheep will be required on the Petition Area. The Applicant intends to provide the tenant with use of the fencing and roadways and other infrastructure to support the tenant's efforts to maximize agricultural production. The Applicant has identified alternatives in the event no lessees are able to succeed in sheep ranching on the Petition Area.**

**The Applicant reaffirmed its commitment to establish a compatible agricultural operation consistent with the statutory requirements regarding lease rates within one year of commencing commercial operation of the SEF and to have such operation on the Petition Area for the duration of the SEF. The Applicant noted that following decommissioning of the SEF, the Petition Area will be returned to substantially the same condition as existed prior to the establishment of the SEF, enabling future agricultural use of the lands.**

**In response to comments regarding the use of energy and/or income derived from the SEF for agricultural purposes, the Applicant noted that it understands Kamehameha Schools plan to use a substantial portion of the income derived from the SEF for agricultural activities on its IAL lands.**

**Finally, the Applicant concurred with the imposition of conditions consistent with the requirements of §205-4.5(a)(21)(A), (B), and (C), HRS.**

*State Department of Land and Natural Resources, Historic Preservation Division  
("SHPD")*

The SHPD determined that no historic properties will be affected by the SEF, and that it concurred with the Applicant's proposed archaeological monitoring during construction to ensure proper documentation and treatment of any inadvertent finds, including possible additional features related to Sites 50-80-04-7171 and 50-80-04-7716, both ditch complexes related to plantation-era activities. The SHPD requested that there be onsite monitoring of all ground disturbing activities, and that an archaeological monitoring plan be submitted to the SHPD for review and acceptance prior to any ground disturbing activities.

**The Applicant acknowledged that an archaeological monitoring plan will be submitted for the SHPD's review and acceptance prior to any ground disturbing activities.**

*State Department of Land and Natural Resources, Division of Aquatic Resources  
("DAR")*

The DAR requested that Best Management Practices ("BMPs") be included in the Petition so that it has an opportunity to review the BMPs prior to the start of the Project. The DAR noted that there was no mention of the BMPs to mitigate adverse impacts from the sheep grazing. The DAR further pointed out that no BMPs were identified to mitigate soil exposure, erosion, and soil runoff from reaching the river below the Petition Area.

**The Applicant noted that the proposed BMPs to be incorporated within the SEF operation were detailed in the Preliminary Civil Engineering Report,**

which has been shared with the DAR.<sup>8</sup> With respect to the planned pasturage of sheep on the Petition Area, the Applicant pointed out that the tenant would be responsible for all aspects of the agricultural operation, including any necessary permit approvals and implementation of appropriate BMPs. In addition, the tenant will be expected to work with the Natural Resource Conservation Service and develop a Conservation Plan for the ranching activities as a member of the Soil and Water Conservation District.

*State Department of Land and Natural Resources, Commission on Water Resource Management ("CWRM")*

The CWRM noted that there is an existing deep monitor well on a portion of the Petition Area; however, there was no pump installed in the well. A pump installation permit would be required before groundwater is developed as a source of supply. The CWRM further noted that if the well will be impacted by the construction or operation of the SEF, a plan to protect the well head or abandon/seal the well should be developed. The CWRM also requested information on the source of water for the possible onsite irrigation ponds as well as estimates of the water quantities needed to support the Project.

In response to the CWRM's comments, the Applicant noted that no groundwater would be developed as a source of supply for the SEF, and that the existing well is not expected to be impacted by the operation. With respect to the source of water for the onsite irrigation ponds, the Applicant pointed out that the operation of the SEF would require a minimal amount of water, primarily for panel washing that would occur no more than once per year. It is estimated that approximately 50,000 gallons of water would be used in this process. According to the Applicant, rain could minimize the need for washing. The responsibility of providing for the water needs of the sheep pasturage, including obtaining the necessary permits, would fall on the rancher.

*State Department of Transportation ("DOT")*

The DOT, Airports Division, noted that PV systems can create hazardous conditions for pilots due to possible glint and glare reflected from the PV array.

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<sup>8</sup> The DAR subsequently acknowledged that the BMPs in the Preliminary Civil Engineering Report addressed the DAR's concerns for stormwater runoff during the construction phase (temporary BMPs) and long-term facility maintenance phase (permanent BMPs) of the SEF.

The Airports Division noted that if glint or glare created a hazardous condition for pilots, the Applicant must be prepared to immediately mitigate the hazard, upon notification by the Airports Division or the Federal Aviation Administration ("FAA").<sup>9</sup>

The DOT, Highways Division, noted that it was still conducting its review of the Petition.<sup>10</sup>

### Federal Agencies

#### *U.S. Fish and Wildlife Service ("USFWS")*<sup>11</sup>

The USFWS expressed concern about potential adverse impacts of the SEF on the federally endangered Hawaiian hoary bat as well as on bird species such as the Hawaiian coot, the endangered Hawaiian stilt, the Hawaiian gallinule, the Hawaiian duck, the endangered Hawaiian goose, the threatened Newell's shearwater, and the federally endangered Hawaiian petrel. The USFWS recommended that to minimize impacts to the bat, woody plants greater than 15 feet tall not be disturbed, removed, or trimmed during the birthing and pup rearing season. Site clearing should also be timed to avoid disturbance during this time. In addition, the use of barbed wire on fencing should be avoided to prevent snagging. The USFWS further recommended that bird activity be monitored and personnel be educated about the potential for birds to be attracted to the site and inadvertently harmed.

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<sup>9</sup> Although the Applicant did not specifically respond to the comments of the Airports Division, its consultant did prepare a glint and glare study in accordance with the FAA's recommendations. According to the study, solar panels are usually designed with anti-reflective glass front surfaces to capture and retain as much as the solar spectrum as possible. As such, solar module glass has less reflectivity than water or window glass. The findings of the study indicated that there was no significant glare or glare impacts on observation points, including Wheeler and Dillingham Airfields, which would adversely affect aircraft. The study concluded that the potential for significant glare impacts was unlikely, and that any glare would be of short duration and barely perceptible to aviators.

<sup>10</sup> The DOT, Highways Division, never provided comments on the Petition.

<sup>11</sup> The State Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW"), had similar comments to the USFWS. The DOFAW also recommended that site personnel document sightings of threatened or endangered species and immediately report any mortality or injury of the species to the DOFAW. Similarly, the DOFAW recommended that any observations of the hoary bat in the area be reported to the DOFAW. Finally, the DOFAW recommended that the Applicant consult with the DOFAW and the USFWS throughout the planning process to determine if a threatened or endangered species is likely to be impacted by the Project.



In response to the USFWS's comments, the Applicant noted that operations personnel at the Petition Area will be trained to document and report any downed wildlife encountered during routine site inspections. According to the Applicant, training will include recognizing protected species and establishing standardized protocols for documenting and reporting occurrences of downed wildlife to the USFWS and the DOFAW.

With respect to the Hawaiian hoary bat, the Applicant concurred with the recommendations of the USFWS and the DOFAW to avoid disturbing, removing, or trimming woody plants greater than 15 feet tall during the birthing and pup rearing season. In addition, the Applicant represents that the perimeter fence will not include barbed wire that could inadvertently snag bats. Finally, the Applicant is committed to keeping the USFWS and the DOFAW apprised of any changes to the SEF to determine if there could be potential impacts to a threatened or endangered species.

## 6. IMPACTS UPON THE RESOURCES OF THE AREA

### Agricultural Resources

The Petition Area includes soils classified by the LSB as class A, B, C, and E lands. The majority of the lands is comprised by class B lands, with significantly smaller acreages comprised by, in decreasing order, class C, E, and A lands.

The Natural Resource Conservation Service classifies the soil types as belonging to the Wahiawa Series (Wahiawa silty clay, 3 to 15 percent slopes) and Leilehua Series (Leilehua silty clay, 2 to 12 percent slopes. Permeability of these soils is moderately rapid. Runoff is slow to medium, and the erosion hazard is slight to moderate.

According to the Agricultural Lands of Importance to the State of Hawaii classification system, the soils consists of prime lands, which are best suited for the production of food, feed, forage, and fiber crops. The land has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops when properly managed (including water management).

Under Docket No. DR14-52/Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools, the Petition Area constituted a part of the Kawaiiloa portion of the docket. Most of the agricultural activities are concentrated on lands below 600 feet in elevation. Diversified agriculture represents the primary agricultural use of the area. To a lesser extent, livestock and a koa windbreak are the other agricultural uses. Although the Petition Area was used for sugarcane cultivation until 1996, at the present time, it is mostly vacant.

In conjunction with the SEF, the Applicant will establish or will actively seek to establish a compatible agricultural operation on the Petition Area within one year of the commencement of the commercial operation of the SEF. The Applicant proposes to make available the lands for compatible agricultural activities at a lease rate that is at least 50 percent below the fair market rent for comparable properties as required by §205-4.5(a)(21)(A), HRS, for the duration of the commercial energy generation operations. The Applicant has already executed a Letter of Intent to Kualoa Ranch to lease the Petition Area for the pasturage of sheep. Alternatives to sheep raising have been identified in the event such endeavor does not succeed.

Finally, the Applicant noted that following decommissioning of the SEF, the Petition Area will be returned to substantially the same condition as existed prior to the establishment of the SEF, enabling future agricultural use of the lands.

#### Archaeological/Cultural Resources

ASM Affiliates, Inc., prepared an Archaeological Inventory Survey ("AIS") of the Petition Area in November 2014. Minor revisions to the AIS were subsequently done in January 2015. The AIS involved research of historical and archaeological resources and documents. The Petition Area was used for plantation agriculture and contains fields, plantation roadways, and other related infrastructure. A complete pedestrian survey of the lands was undertaken and previously recorded Site 50-80-04-7171 and newly recorded Site 50-80-04-7716 (both ditch complexes related to plantation-era activities) were documented. According to the assessment, both sites were significant to the extent that they have yielded, or are likely to yield, information important for research on prehistory or history. No historic properties were deemed to be affected and archaeological monitoring to address inadvertent finds was recommended.

The SHPD subsequently determined that no historic properties will be affected by the SEF, and that it concurred with the Applicant's proposed archaeological monitoring during construction to ensure proper documentation and treatment of any inadvertent finds, including possible additional features related to Sites -7171 and -7716.

As requested by the SHPD, the Applicant plans to submit an archaeological monitoring plan to the SHPD for its review and acceptance prior to any ground disturbing activities.

#### Flora and Fauna

SWCA Environmental Consultants prepared a Natural Resource Assessment of the Petition Area and surrounding areas. Biological Resources Surveys prepared by Robert W. Hobdy for the nearby Kawaihoa wind energy generation system (wind turbine farm) were also utilized in assessing the impacts of the SEF on the biological resources of the area.

The Petition Area is comprised almost entirely by non-native, weedy plant species. The only native species was uhaloa, a common species found throughout the State. The most abundant species on the Petition Area is Guinea

grass, an introduced species. No state or federally listed threatened, endangered, or candidate plant species have been recorded within the Petition Area. No designated (or proposed) critical habitat exists. The construction of the SEF is not anticipated to adversely affect the botanical resources on the Petition Area.

Of the 26 species of birds observed on the Petition Area and surrounding lands, four are native or winter migrants to the State: the Black-crowned night heron, the Pacific golden-plover, the endangered Newell's shearwater, and the Hawaiian duck-mallard hybrid. It is also possible that the endangered Hawaiian petrel transits the land. Nesting habitat for the seabird species does not exist on the Petition Area. Although there are no open water features or mudflats on the Petition Area, several endangered waterbirds have been observed at nearby waterbodies and/or flying over the Kawailoa area, and could transit the area while moving between nearby habitat. Such waterbirds include the Hawaiian stilt, Hawaiian coot, and the Hawaiian moorhen. The Hawaiian duck-mallard hybrid could also occasionally fly over from Kauai.

Although the anti-reflective panels are not expected to lead to bird collisions, the Applicant agreed to train operations personnel at the Petition Area to document and report any downed wildlife encountered during routine site inspections. According to the Applicant, training will include recognizing protected species and establishing standardized protocols for documenting and reporting occurrences of downed wildlife to the USFWS and the DOFAW.

The endangered, native Hawaiian hoary bat has been documented flying in the Kawailoa area. Bat activity has been detected in essentially all habitats in the area, including clearings, along roads, along the edges of tree lines, in gulches, and at irrigation ponds. The bats appear to use these features for travelling and foraging. Consistent with the recommendations of the USFWS and the DOFAW, the Applicant will avoid disturbing, removing, or trimming woody plants greater than 15 feet tall during the birthing and pup rearing season. In addition, the Applicant represents that the perimeter fencing will not include barbed wire that could inadvertently snag bats.

In conjunction with the USFWS and the DOFAW, appropriate protocols for the construction and operation of the SEF to monitor and mitigate risks to protected species will be developed.

### Groundwater Resources

The Applicant does not plan to utilize groundwater as a source of water supply for the SEF. The occasional irrigation of landscaping and periodic cleaning of the solar panels will require a minimal amount of water, which will be available from rainwater catchment equipment, onsite irrigation ponds, or transported to the Petition Area via truck. No hook-up to the municipal water system is anticipated.

### Visual Resources

Views of the SEF from publicly accessible locations in the neighboring areas are expected to be minimal based on the low profile of the solar arrays and the existing topography and vegetation surrounding the Petition Area.

Solar panels are designed to reflect approximately 2 percent of incoming sunlight. Panels are typically designed with anti-reflective glass front surfaces to capture and retain as much of the solar spectrum as possible. In general, solar module glass has less reflectivity than water or window glass. A reflectivity study conducted for the SEF evaluated the potential for glare at 14 locations surrounding the Petition Area, including Wheeler and Dillingham Airfields and various roadways and residential areas. Based on the study, none of the observation points will have potential glare. The potential for significant glare-related impacts is unlikely, and any glare would be of short duration and barely perceptible to aviators. In the event the SEF creates a hazardous condition for pilots, the Applicant will immediately initiate steps to mitigate the hazard upon notification by the appropriate authorities.

## 7. ENVIRONMENTAL QUALITY

### Air Quality

During construction of the SEF, exhaust from increased vehicular traffic and fugitive dust from construction activity will generate short-term impacts. Temporary BMPs, including dust fences, windbreaks, water of disturbed areas, and other soil management measures, will be implemented. BMPs will be identified and included on the erosion control plans that are required for grading and erosion control permit approvals issued by the State and City and County. Construction activities at the property will comply with the regulations for fugitive dust control in §11-60.1, HAR

The SEF itself will not generate direct air emissions. Operation and maintenance activities may result in minimal amounts of fugitive dust or tailpipe emissions from vehicular traffic and landscape maintenance. Adverse impacts to air quality are not anticipated.

### Noise

Ground-mounted inverters and transformers make a humming noise during daytime hours when the solar array generates electricity. This sound is typically inaudible in areas approximately 50 to 150 feet from the boundary of the array. There may be some sound generated from switching gear associated with the power substation, but this is expected to be minimal. Another noise source would include mowers and string trimmers used for vegetation control. None of these are expected to be audible from the nearest residences, which are approximately 0.7 miles from the Petition Area.

### Water Quality

The solar panels themselves do not generate pollution that would impact groundwater or surface water. No chemical agents will be used to clean the panels. The Applicant will employ BMPs to address potential impacts of the development of the SEF to water quality (see discussion on *Drainage* below) and comply with all necessary permit requirements prior to construction, including National Pollution Discharge Elimination System permit coverage for construction-related stormwater.

## 8. ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Roadways

Ashley Road, a private road with gated ingress/egress off Kamehameha Highway, provides access to the Petition Area. Maintenance and inspection of the SEF, including supplemental mowing, landscaping, panel cleaning, and electrical maintenance, would occur irregularly with employees driving on a network of internal gravel roads throughout the Petition Area. No centralized parking facilities are planned. In its staff report, the DPP noted that to avoid internal traffic conflicts within the Petition Area among the different uses, the operational needs of the users should be coordinated in regard to infrastructure requirements.

### Water

The City and County of Honolulu Board of Water Supply ("BWS") does not service the Petition Area. The occasional irrigation of landscaping and periodic cleaning of the solar panels will require a minimal amount of water, which will be available from rainwater catchment equipment, onsite irrigation ponds, or transported to the Petition Area via truck. No hook-up to the municipal water system is anticipated.

### Drainage

The area generally slopes mauka to makai down from elevations of 1,280 feet to 200 feet with an average slope of approximately 7 percent. It is located in Flood Zone D, an area where flood hazards are undetermined. Existing runoff currently discharges through sheet flow or shallow concentrated flow into swales onto adjacent downstream properties. The solar panels are proposed to be located in the flatter, more gradually sloped areas on the ridgelines and away from the steep ravines that lead to the valleys below.

Clearing, grubbing, and grading will be required for placement of the panels, equipment, facilities, access driveways, fence, and vegetated buffer. According to the Applicant, site grading will be limited to smoothing out localized high or low spots, and earthwork volumes and related construction costs will be minimized by optimal placement of the PV racks by following the existing grades and elevations.

To address grading and erosion control regulations, the Applicant intends to implement temporary BMPs during construction and permanent BMPs thereafter. Temporary erosion control BMPs, which would be implemented in a phase manner through grading increments, may encompass the following: (1) preservation of natural vegetation; (2) minimizing area of clearing and grubbing; (3) vegetated buffers; (4) temporary soil stabilization with grass and/or mulch; (5) silt fences/fiber filtration tubes; (6) gravel bag berms/check dams; (7) stabilized construction entrances; (8) sediment traps and basins; (9) temporary diversion swales and ditches; and (10) water application and/or dust screens.

Permanent BMPs would include (1) final stabilization of exposed soils through landscaping or installation of impervious surfaces including pavement and buildings; (2) infiltration trenches; (3) dry wells and sumps; (4) grass swales and ditches; (5) filter strips; and (6) sediment traps and basins.

Impacts from impervious infrastructure such as concrete equipment pads, control structures, substation and switchyard, and micro-pile/pier foundations are expected to be minimal as a result of their even distribution throughout the Petition Area, slight leveling of driveway areas, and use of raised gravel driveways.

Onsite stormwater will be directed away from equipment pads and any other structures to minimize erosion. Drainage channels with velocity reduction controls will be constructed in which water will flow to stormwater basins and/or other volume control facilities if required. The volume control facilities will be situated at downstream locations and will discharge out with non-erosive velocities back into the natural drainage features.

Any offsite flows will be diverted around the Petition Area or through it so as to not impact the existing drainage paths and the proposed construction. If required, diversion channels will be constructed with check dams, drop structures, or other velocity reducing controls and flow back into the natural drainage features.

It is anticipated that the SEF will not result in a significant pre-development to post-development increase in stormwater flows. Nevertheless, while the grassed areas below the panels would be exempt from complying with the low impact development ("LID") requirement of the City and County of Honolulu as they would be considered an acceptable permanent BMP, other areas that could be



considered disturbed or developed, as identified above, will need to comply with the LID requirements.

#### Wastewater

Normal operation of the SEF will not require permanent onsite personnel; therefore, no permanent wastewater facilities will be required.

#### Solid Waste

Construction and operation of the SEF is not expected to generate a significant amount of solid waste. During construction, all waste would be temporarily stored onsite and periodically transported and properly disposed of. Little to no waste would be generated during operation of the SEF. As such, refuse collection services would not be adversely affected.

#### Police and Fire Protection

The SEF will not require additional police protection. The Petition Area is only accessible via a private and gated agricultural road.

Any building permits will be circulated to the Honolulu Fire Department ("HFD") for review. Any firefighting infrastructure required by the HFD may be imposed at that time.

While sheep pasturing and other compatible agricultural areas on the Petition Area may minimize the brush fire potential, surrounding lands may be susceptible to brush fires that could adversely impact the SEF. In its staff report, the DPP recommended that the Applicant consider establishing driveways or setbacks between the solar panels and the fence line to minimize impacts from wildfires offsite.

## 9. CONFORMANCE TO THE SPECIAL PERMIT GUIDELINES

The following summarizes the DPP's analysis as to how the SEF addresses the special permit guidelines for determining an "unusual and reasonable" use in the State Land Use Agricultural District.

1. Such use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the LUC.

*Utility scale PV facilities currently require a large amount of relatively gently terrain in proximity to an existing electrical grid. The Petition Area was formally used for pineapple cultivation and is currently in pasture use. The Applicant proposes to continue agricultural use of the Petition Area by utilizing the land under the solar panels for sheep pasturage. The sheep will provide vegetation control and a food source.*

*To address statutory requirements under §205-4.5(a)(21), HRS, and concerns about endangered and threatened species and their habitats, the DPP recommended conditions to require the Applicant to (1) submit an agricultural site plan depicting the area that will be set aside for compatible agricultural use; (2) provide documentation demonstrating it has the financial ability to decommission the facility and return the area to its previous condition; and (3) consult with the USFWS to protect endangered species and migratory birds.*

2. The desired use would not adversely affect surrounding property.

*The land immediately adjoining the Petition Area is used for a wind energy generation facility. Other surrounding lands are used for diversified agriculture, open space, and military training. The nearest residential areas are located along Kamehameha Highway and in the Pupukea Country zoning district, approximately 0.7 miles to the west and one mile to the north, respectively.*

*Impacts to air quality from the operation of the facility are not anticipated to impact surrounding properties. Any noise impacts from construction and maintenance of the SEF will be short term.*

*With respect to visual impacts of the SEF, minimal impacts are expected based on the Applicant's view study. Finally, the Applicant has proposed BMPs to address storm water quantity and quality concerns raised by the DAR as well as fire hazards, panel maintenance, and air quality.*

3. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements and police and fire protection.

*The SEF would not unreasonably impact transportation, wastewater, water, and drainage infrastructure nor school, fire, and police services.*

*Access to the Petition Area is via a private access road with gated ingress/egress off Kamehameha Highway. Maintenance and inspection of the SEF, including supplemental mowing, landscaping, panel cleaning, and electrical maintenance, would occur irregularly with employees driving on a network of internal gravel roads throughout the Petition Area. No centralized parking facilities are planned.*

*Normal operation of the SEF will not require permanent onsite personnel; therefore, no permanent wastewater facilities will be required.*

*The Petition Area is not serviced by the BWS. The occasional irrigation of landscaping and periodic cleaning of the solar panels will require a minimal amount of water, which will be available from rainwater catchment equipment, onsite irrigation ponds, or transported to the site via truck. No hook-up to the municipal water system is anticipated.*

*The Petition Area is currently overgrown with a mix of grasses, shrubs, and trees and is well drained. The SEF is not expected to adversely impact the existing drainage patterns, which generally sheet flow into the surrounding gullies. No residential uses are planned and the individual sites within the facility will be completely fenced.*

*Additional police services are not warranted as the Petition Area will only be accessible via a private and gated agricultural road. With respect to fire protection, building permits for the SEF will be circulated to the Honolulu Fire Department ("HFD") for review, and any firefighting infrastructure required by the HFD may be imposed at that time.*

4. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.

*Large-scale SEFs on Oahu are a recent development as a result of the availability of tax incentives and the increasing cost of traditional fossil fuels. This has made their development an economically viable alternative to plantation agriculture.*

*The trend to use large areas of land for energy generation was not anticipated at the time the State Land Use Law was established.*

5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

*The Petition Area is considered good quality agricultural land that is suitable for uses permitted within the district. To the extent that the Petition Area will also be made available for compatible agriculture consistent with the statutory requirement under §205-4.5(a)(21), HRS, there will be little loss of high quality agricultural land. A condition requiring that a compatible agricultural activity on the Petition Area be undertaken for the duration of the SEF operation or that the Applicant actively seek to have such agricultural activities established is recommended.*

## 10. PLANNING COMMISSION RECOMMENDATION

On April 15, 2015, after discussion of the Petition, the Planning Commission voted to recommend approval of the Petition and to forward its decision to the LUC for its approval, subject to the following ten conditions:<sup>12</sup>

1. Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established, or Applicant shall be actively seeking to have such operations established, within 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the DPP for unforeseen extenuating circumstances.
2. If at any time during the term of the SUP no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Commission and the Director of the DPP in writing within 30 days of the end of the 6-month period. If requested by the Commission, the Applicant shall attend a meeting of the Commission and submit a report to the Commission detailing the Applicant's actual and reasonable efforts to actively seek the establishment of compatible agricultural operations on the usable lands of the Petition Area. The Commission shall determine whether probable cause exists to re-evaluate the SUP and to hold a hearing pursuant to Section 2-49 of the Rules of the Commission. Extensions to the 6-month deadline may be granted by the Commission for unforeseen extenuating circumstances.

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<sup>12</sup> The Petition, as recommended for approval by the Planning Commission, is comprised by approximately 382.2 acres of land to reflect the deletion of 1.9 acres that are proposed to contain underground cables, which the DPP deemed as a permissible use within the State Land Use Agricultural District.

In its Findings of Fact, Conclusions of Law, and Decision and Order, the Planning Commission concluded that in addition to complying with §205-6, HRS, the SEF complied with the relevant sections of chapter 205, Part III, pertaining to IAL, as follows:

- a. The use does not conflict with any part of chapter 205, HRS;
- b. The public benefit to be derived from the SEF is justified by a need for additional lands for non-agricultural purposes; and
- c. The SEF will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands.

3. The Applicant shall submit for review and obtain the approval of the following from the Director of the DPP, prior to the issuance of a grading or building permit:
  - a. A survey map accompanied by a metes and bounds description of the approved Petition Area.
  - b. A site plan showing the area required under Condition 1, above, relating to the minimum land area to be made available for compatible agricultural use.
4. Prior to the closing of the building permit for the SEF, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a creditworthy financial institution, in favor of the owner of the land subject to the SUP, in the amount of four million dollars (\$4,000,000.00), which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the DPP on an annual basis, to decommission the Project and restore the Petition area to substantially the same physical condition as existed prior to the development of the SEF.

The Applicant shall decommission the SEF within twelve (12) months following the termination of operations of the SEF. A change in Project ownership or a change in ownership of the land subject to the SUP, which warrants a new proof of financial security to decommission the Project, shall be submitted to the DPP for processing through the Commission, within three (3) months of the ownership change.

5. The Applicant shall comply with the recommendations of the U.S. Fish & Wildlife Service regarding the protection of endangered or migratory bird activity at the Petition Area.
6. The Applicant shall establish the Project within two (2) years of the date of the LUC's Decision and Order approving the SUP. Requests for extension of this deadline shall be submitted to the Director of the DPP prior to the expiration of the deadline. The LUC may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SUP shall be valid for a period of thirty-five (35) years from the date of the LUC's Decision and Order approving the SUP, subject to further extensions upon a timely

request for extension filed with the Commission at least one-hundred twenty (120) days prior to the SUP's expiration.

7. On or before December 31 of each year that the SUP is in effect, the Applicant or its successor shall file an annual report to the DPP that demonstrates the Applicant's compliance with conditions of the SUP.
8. Major modifications to: (1) the Project plans, including but not limited to significant increases in the number of PV panels; (2) amendments to the conditions of approval; (3) significant expansions of the approved area; or (4) change in uses stated herein, shall be subject to the review and approval of the Commission and the LUC. Minor modifications including minor additions to accessory uses and structures, and new incidental uses and structures in the approved area are subject to review and approval by the Director of the DPP.
9. The Applicant and/or landowner shall notify the Director of the DPP of:
  - a. Any change or transfer of licensee on the property;
  - b. Any change in uses on the property;
  - c. Termination of any uses on the property; and/or
  - d. Transfer in ownership of the property.

The Commission, in consultation with the Director of the DPP, shall determine the disposition of this SUP, and the facilities permitted herein.

10. Enforcement of the conditions of the SUP shall be pursuant to the Rules of the Commission, including the issuance of an order to show cause as to the reason the SUP should not be revoked if the Commission has reason to believe that there has been a failure to perform the conditions imposed herein.

## 11. SUMMARY OF ISSUES

§§205-6(e), HRS, and 15-15-96(a), HAR, provide the alternative actions that may be taken by the LUC in its consideration of the Petition. The LUC may approve, approve with modification, or deny the Petition. The LUC may impose additional restrictions as may be necessary or appropriate in granting the approval. Any modifications or additional restrictions must be based on the record as developed by the Planning Commission. The LUC may also remand the Petition to the Planning Commission for further proceedings if the LUC determines that consideration of new information, relevant to the Petition, is warranted.

Staff believes that the Applicant and the SEF have adequately met the guidelines for a special permit under §205-6, HRS. The complete record of the Planning Commission includes sufficient information and justification to approve the Petition. If the LUC is inclined to grant the Petition, staff recommends that the ten conditions as recommended by the Planning Commission be imposed with the following amendments to Condition Nos. 4, 5, 7, and 9 (additional text is underscored; deleted text is struckthrough):

4. Prior to the closing of the building permit for the SEF, the Applicant shall submit to the DPP proof of financial security, such as a posted letter of credit or similar mechanism from a creditworthy financial institution, in favor of the owner of the land subject to the SUP, in the amount of four million dollars (\$4,000,000.00), which security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the DPP on an annual basis, to decommission the Project and restore the Petition ~~area~~Area to substantially the same physical condition as existed prior to the development of the SEF.

The Applicant shall decommission the SEF, including the removal of all equipment related to the SEF, within twelve (12) months following the termination of operations of the SEF. A change in Project ownership or a change in ownership of the land subject to the SUP, which warrants a new proof of financial security to decommission the Project, shall be submitted to the DPP for processing through the Planning Commission, within three (3) months of the ownership change.

5. The Applicant shall comply with the recommendations of the ~~U.S. Fish & Wildlife Service~~ USFWS and the DOFAW regarding the protection of the



endangered Hawaiian hoary bat and endangered or migratory bird activity and threatened Hawaiian waterbird and shorebird species at the Petition Area.

7. On or before December 31 of each year that the SUP is in effect, the Applicant or its successor shall file an annual report to the LUC, OP, and the DPP that demonstrates the Applicant's compliance with conditions of the SUP.
9. The Applicant and/or landowner shall notify the Director of the DPP of:
  - a. Any change or transfer of licensee on the ~~property~~ Petition Area;
  - b. Any change in uses on the ~~property~~ Petition Area;
  - c. Termination of nay uses on the ~~property~~ Petition Area; and/or
  - d. Transfer in ownership of the ~~property~~ Petition Area.

The Planning Commission, in consultation with the Director of the DPP, shall determine the disposition of this SUP, and the facilities permitted herein.

In addition, staff recommends that where the term "Commission" is used in Condition Nos. 2, 6, 8, and 10, it be replaced with "Planning Commission" to avoid confusion with the Land Use Commission.

Further, staff recommends that the following conditions be imposed to address concerns raised during review of the Petition:<sup>13</sup>

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<sup>13</sup> The LUC recently imposed Condition Nos. 11 and 13 in its approval of the special permit petition in Docket No. SP15-405/Waipio PV, LLC, to allow the development of a 47-MW PV energy generation facility and accessory uses and structures on approximately 308.8 acres of land within the State Land Use Agricultural District at Waipio, Ewa, Oahu, Hawaii.

Condition No. 12 addresses the request of the SHPD.

Condition No. 14 is similar to the condition imposed by the LUC in its approval of the amendment to the Findings of Fact, Conclusions of Law and Decision and Order issued in Docket No. A87-610/Tom Gentry and Gentry-Pacific, Ltd., to develop a 50-MW PV energy generation facility and accessory uses and structures on approximately 387 acres of land and possibly a second phase consisting of up to a 65-MW PV energy generation facility on approximately 268 acres of land within the State Land Use Urban District at Waiawa, Ewa, Oahu, Hawaii.

11. If the PV array creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA.
12. The Applicant shall submit an archaeological monitoring plan to the SHPD for review and acceptance prior to any ground disturbing activities.
13. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, and Oahu Island Burial Council, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the SEF, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.
14. The Applicant shall develop and operate the SEF, including the implementation of measures to mitigate potential impacts of the development, in substantial compliance with the representations made to the Planning Commission and the LUC as reflected in this Decision and Order. Such mitigation measures include, but are not limited to, the use of temporary and permanent BMPs to ensure that the development and operation of the SEF do not result in an increase in stormwater runoff that adversely impacts downstream properties. Failure to so develop the Petition Area may result in revocation of the special use permit.